

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION

UNITED STATES OF AMERICA,

vs.

DONALD J. TRUMP, *et al.*,

Defendants.

Case No. 23-80101-CR
CANNON/REINHART

PRESIDENT DONALD J. TRUMP'S RESPONSE IN FURTHER OPPOSITION TO THE MOTION FOR A GAG ORDER BY THE SPECIAL COUNSEL'S OFFICE

President Donald J. Trump respectfully submits this response, pursuant to the Court's June 27, 2024 order, ECF No. 657, regarding materials submitted by the Special Counsel's Office relating to the Office's motion for a gag order, ECF No. 652. The Office is either oblivious to or, as we believe, culpably reckless regarding, the egregious censorship that they are asking the Court to enforce against the leading candidate in the 2024 presidential election. The motion should be denied.

Notwithstanding their kitchen-sink approach, the voluminous submission by the Special Counsel's Office does not meaningfully advance their indefensible position. The Office breezes past the context of their efforts to restrict core political speech. *See McIntyre v. Ohio Elec. Comm'n*, 514 U.S. 334, 347 (1995) ("No form of speech is entitled to greater constitutional protection" than "[c]ore political speech."). The Office ignores that their requested gag order would cause irreparable harm to not only President Trump but also the American people. *See, e.g., Packingham v. North Carolina*, 582 U.S. 98, 104 (2017); *Roman Cath. Diocese of Brooklyn v. Cuomo*, 592 U.S. 14, 19 (2020). There is no evidence—much less the "solidity of evidence" required by the Supreme Court—of the type of imminent risk of harm that is necessary to impose

a prior restraint on anyone, let alone the leading candidate for the presidency of the United States.

Pennekamp v. Florida, 328 U.S. 331, 347 (1946); *New York Times Co. v. Sullivan*, 376 U.S. 254, 273 (1964) (holding that “repression” of speech about court proceedings “can be justified, if at all, only by a clear and present danger of the obstruction of justice”).

These deficiencies were apparent before and during the hearing on June 24, 2024, and they are glaring following the 300-page submission by the Special Counsel’s Office and their July 5, 2024 supplemental filing, ECF No. 665. Although the Office refers to “sustained, inflammatory attacks, *id.* at 4, the motion is based on five statements between May 21 and 25, 2024, *see* ECF No. 652, Ex. 1. It is now July. Despite the vast resources and monitoring technology available to the Office and the FBI, and notwithstanding what the Office refers to as “the widespread prevalence of doxing,” ECF No. 665 at 5, they have not pointed to a single threat to a participant in the Mar-a-Lago raid based on President Trump’s wholly appropriate political speech in May 2024. That is no surprise, of course, as the Office has greatly exaggerated the import of President Trump’s political opinions on that topic, and the names of the search participants are sealed.

The Special Counsel’s Office cannot justify a bail modification, or a prior restraint, by reference to purported “evidence” that existed prior to President Trump’s arraignment on June 13, 2023. At that time, the Office did not suggest that President Trump posed any danger whatsoever. *See* 6/13/23 Tr. 10:17-13:12.¹ Nor could they have. That is true notwithstanding the fact that prior to the arraignment, in August 2022, President Trump expressed his constitutionally-protected views that the Mar-a-Lago raid was an “assault,” ECF No. 652, Ex. 3A; an “attack,” *id.* Ex. 3B; a “break in,” *id.*; an example of “atrocities and unthinkable violations of freedom and the law,” *id.*;

¹ Magistrate Judge Goodman, acting *sua sponte*, imposed no-contact conditions relating to potential witnesses. *See* 6/13/23 Tr. 13:13-14:22. Neither Magistrate Judge Goodman nor the Special Counsel’s Office suggested that those conditions related to safety.

and a “government ‘crime,’” *id.* Similarly, at President Trump’s arraignment, the Office did not in any way even attempt to blame President Trump for the concededly unfortunate August 2022 violence at the FBI’s office in Cincinnati. *See id.* Ex. 4. Such a claim would have been as ridiculous then as it is now. Only unconstitutional speculation connects President Trump to these third parties’ actions, and that is not enough. However, the meritless heckler’s-veto argument—that the Court should ignore the First Amendment and impose liberty restraints on President Trump based on the actions of third parties—pervades the motion.

Evidence relating to unconstitutional gag orders entered against President Trump in other cases, which we very much dispute, does not support a bail modification. As the Court suggested at the June 24 hearing, those courts did invoke their inherent authority to protect the integrity of the proceedings. 6/24/24 Tr. 6-10. The integrity of the proceedings is not a relevant consideration under the Bail Reform Act. Therefore, evidence that courts previously cited to impose those types of gag orders, which we continue to contest, does not support the unfounded suggestion that President Trump’s campaign speech “will endanger the safety” of the FBI. 18 U.S.C. § 3142(c)(1).

Finally, we note that President Biden’s recent statements regarding the Supreme Court’s decision in *Trump v. United States* further illustrate the Office’s unethical and embarrassingly partisan approach to this motion and this case. In at least two separate campaign communications on July 4, 2024, President Biden referred to the Supreme Court’s *Trump* decision as “absolutely dangerous” and “terrifying,” he made demonstrably false claims about the scope of the decision, and he urged voters to “fight back”:

Folks, what the Supreme Court just decided is unprecedented and absolutely dangerous.

Trump would now be immune for **assassinating** a political rival.
Trump would be immune for **accepting bribes**.
Trump would be immune for **organizing a military coup** to hold onto power.

We're used to saying no person is above the law. *Not anymore.*

As long as Trump is engaged in "official acts" as president, the Supreme Court says he'd face virtually no chance of prosecution for breaking the law.

We know we've sent you a lot of emails on the Supreme Court's ruling granting Donald Trump virtually unlimited *immunity from criminal prosecution*.

Here's why: This decision is terrifying, undermines the rule of law in our nation, and raises the stakes of this election even higher than before.

Don't just take it from us -- Justice Sonia Sotomayor's dissenting opinion makes clear that American democracy as we know it is on the line. She wrote, "With fear for our democracy, I dissent."

To use Jack Smith's words, President Biden's communications contain "several intentionally false and inflammatory statements," which "create a grossly misleading impression" about the Supreme Court's ruling, ECF No. 592 at 1, and are arguably "vengeful," ECF No. 665 at 5. Based on the Office's words and logic, one could easily regard these communications as a "dangerous campaign to smear" the Supreme Court using "deceptive and inflammatory claims" that "expose" the Justices to "unjustified and unacceptable risks." ECF No. 592 at 2, 3. Chief Justice Roberts has previously called attention to this type of safety issue,² but President Biden leveled these false claims anyway. Consistent with President Biden's inaccurate and hyperbolic campaign speech, some of his "followers" recently advocated for the murder of President Trump.³ President Biden "has made

² See, e.g., 2022 Year-End Report on the Federal Judiciary at 4 ("The law requires every judge to swear an oath to perform his or her work without fear or favor, but we must support judges by ensuring their safety."), <https://www.supremecourt.gov/publicinfo/year-end/2022year-endreport.pdf>.

³ James Hibberd, 'OITNB' Actress Lea DeLaria Calls on Biden to Assassinate Trump: "This Is a War," THE HOLLYWOOD REPORTER (July 2, 2024) ("Joe, you're a reasonable man . . . You don't want to do this. But here's the reality: This is a fucking war. This is a war now, and we are fighting for our fucking country. And these assholes are going to take it away. They're going to take it

no effort to discourage these threats and harassment, despite knowing that his followers listen to him.” ECF No. 665 at 4.

In short, there is more direct and recent evidence supporting the need for a prior restraint on President Biden than there is supporting the bail-modification motion by the Special Counsel’s Office. We doubt, however, that much time was spent at DOJ investigating President Biden’s comments and the foreseeable risks he created to the Justices of the Supreme Court, their staffs, President Trump, and others. Operating in the vortex created by President Biden’s work with Jack Smith to interfere with the upcoming election requires a “thick skin.” *United States v. Trump*, 88 F.4th 990, 1027 (D.C. Cir. 2023). Those who are behind this FBI public-relations campaign, styled as a motion for unprecedented and unconstitutional relief against the leading Presidential candidate in the 2024 election, ought to heed that guidance more closely. The Court has already taken significant measures to protect the identities and safety of the participants in the raid at Mar-a-Lago. There is no basis for imposing a gag order that would condition President Trump’s liberty on the Office’s censorship of his political speech. Accordingly, the motion should be denied.

away. Thank you, [Supreme Court Justice] Clarence ‘Uncle’ Thomas. Joe, you now have the right to take that bitch Trump out. Take him out, Joe. If he was Hitler, and this was 1940, would you take him out? Well, he is Hitler. And this is 1940. Take him the fuck out! Blow him up, or they’ll blow us up. Facts.”), <https://www.hollywoodreporter.com/news/politics-news/lea-delaria-biden-assassinate-trump-1235937794>.

Dated: July 5, 2024

Respectfully submitted,

/s/ Todd Blanche / Emil Bove
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CERTIFICATE OF SERVICE

I, Kendra L. Wharton, certify that on July 5, 2024, I electronically filed the foregoing document with the Clerk of Court using CM/ECF.

/s/ Kendra L. Wharton
Kendra L. Wharton